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AUTHOR Broussard, E. Joseph: Blackmon, C. Robert
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ABSTRACT

A survey was conducted of 260 high school principals in 48 states concerning their knowledge of communication law as it related to freedom of the press under the First Amendment of the United States Constitution. The survey instrument contained information concerning nine composite court cases, and respondents were asked to indicate for each case how a judge might decide on the legal issues. They were also asked to state their own ethical perception of each case. In addition, the instrument solicited general information about the respondents' background, education, and journalistic experience. Completed forms were returned by 135 (52%) of the principals. Telephone interviews were then conducted with approximately 20% of those returning forms. The findings revealed that principals lacked knowledge of the law and suggest that, having little or no legal knowledge, principals make decisions biased by their personal values, their perception of the mores of their communities, or inadequate and unclear interpretations of the law by school boards and board attorneys. (FL)

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ETHICAL/LEGAL DICHOTOMIES ON THE FIRST AMENDMENT RIGHTS OF THE STUDENT PRESS

E. Joseph Broussard
Director of Journalism Research

and

C. Robert Blackmon
Director, Bureau of Educational Research

Louisiana State University
Baton Rouge, Louisiana 70803

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ETHICAL/LEGAL DICHOTOMIES ON THE FIRST AMENDMENT RIGHTS OF THE STUDENT PRESS

By

Dr. E. Joseph Broussard and Dr. C. Robert Blackmon

High school principals are being challenged today more frequently than ever before on decisions involving the school newspaper staff's First Amendment rights. The researchers found that many of these decisions are based on personal judgment and community standards rather than knowledge of the law. This report expands the researchers' 1977 study of principals' knowledge of First Amendment freedom of the high-school press and includes the ethical dimension by asking not only "Could you restrain publication?" but also "Should you?" in reference to nine situations constructed from 35 federal cases. Search of the literature reveals numerous discussions of the problem area, particularly regarding a few major court decisions, but there are relatively few related research studies. Captive Voices, the Kennedy Report, dramatically highlighted--through its reporting of both the ignorance of the affected parties and the abuse of student rights by some administrators--the need for study of this turbulent area of the school activities program.

PROCEDURES

A search of the related literature was made in order to conceptualize the problem. Related court decisions were selected and digested into nine composite cases to be submitted to high-school principals, along with requests for additional items related to their backgrounds. Because every case is relatively unique, no one can say with certainty how a judge will rule. Therefore, in the absence of specific and narrowly drawn school

or board regulations, the "correct" response given for each of the nine case items used in this study is a subjective judgment of the authors. Their decisions were based on a study of cases, the literature on those cases, and expert opinions obtained.

The three percent random, proportionate sample of 260 principals was drawn from 8,660 high schools in 48 states. The schools were identified through the aid of the Quill and Scroll Foundation which also provided partial support for the study. Each respondent was asked to indicate for each case how he thought a judge might decide on each of the case items. Additionally, he was asked to respond whether he felt that he should restrain publication or distribution. One hundred thirty-five (52%) subjects responded. Twenty percent of the sample were interviewed by telephone to add depth to interpretation of the data.

Simple statistics were tabulated, and chi-square tests were computed on case items and in terms of survey information items given by respondents on their education, journalism background, and professional education experience. Cochran Q-tests (McNemar 2x2) were conducted on the ethical/legal responses to evaluate the significance of dichotomies. A Spearman rank order correlation of the percentage of correct responses in 1979 to case items in the 1977 surveys was calculated.

THE INSTRUMENT

The instrument presented below was used to survey the principals. After each case space was provided for the principals' comments. The explanatory material following each case item in this report was not included on the survey instrument. That information summarizes the cases which the authors used as foundations for construction of the nine hypothetical case items. Also, data on the responses to the questions have been added in parentheses. Case precedent is indicated

below by underlining Yes or No.

SHOULD YOU? COULD YOU?

As principal please respond (in the blanks provided) to BOTH of the questions following each of the nine situations described below. If you feel that your comments would be helpful in interpreting your responses to a particular case, feel free to do so in the space provided or on the back.

The school newspaper attacks the way law enforcement officials handled a situation on the campus. It also hurls racial slurs at unnamed students from an ethnic minority.

1. Do you feel that you should stop publication? 1. No (25%)
   2. Yes (72%) NA (2%)

2. Do you have the legal authority to stop publication? 1. No (32%)
   2. Yes (62%) NA (5%)

Prior restraint is prohibited under Near v. Minnesota, except in very narrow circumstances. In Near the Supreme Court said that prior restraint is censorship. However, in Sullivan v. Houston Independent School District the court indicated that exceptions could be made where strict substantive and procedural guidelines are employed.

Near v. Minnesota, 283 U.S. 697, 51 S.Ct. 625 (1931). The U.S. Supreme Court ruled that the state government could not forbid a newspaper to publish because it had made scurrilous attacks on law enforcement officers and Jews. In effect, authorities could not exercise prior restraint of publication. However, in N.Y. Times v. Sullivan, if such publication were done without malice, the material would not be considered actionable libel. On prior restraint see also: Leibner v. Sharbaugh, E.D. U.S. D. Ct., No. 77-0 111-A, Feb. 25, 1977.

The school newspaper contains incorrect information of a damaging nature to the superintendent of schools and school board members for some of their public actions.

3. Do you feel that you should stop publication? 1. No (21%)
2. Yes (78%) NA (1%)

4. Do you have the legal authority to stop publication? 1. No (25%)
2. Yes (71%) NA (4%)

Near applies here also. Irresponsible as such a publication might be, prior restraint cannot be exercised because the statements are not libelous until published. The principal could not even though, unlike number one, this case would libel school officials. Apparently the point at issue as to whether or not the principal could exercise prior restraint became obscured emotionally for the principals because the administrative power structure was involved.

Students distribute an underground newspaper that criticizes you and your assistants and strongly urges the student body to disregard specific school regulations.

5. Do you feel that you should prevent distribution? 1. No (31%)
2. Yes (69%)

6. Do you have the legal authority to prevent distribution? 1. No (22%)
2. Yes (73%) NA (5%)

In Scoville v. J[illegible] Township High School District a federal court ruled that distribution could not be restrained unless the principal could reasonably forecast disruption of school activities. Mere apprehension was not sufficient; factual evidence must be available for prediction of disruption.

Scoville v. Joliet Township High School District 204, 425 F. 2d 10

(7th Cir. 1970), cert. den. 400 U.S. 826 (1970). Students could not be suspended for distributing an underground newspaper criticizing school administrators and urging to not obey specific school regulations. The appellate court ruled for the students on the grounds that school officials had insufficient evidence to reasonably show that disruption would occur upon distribution of the publication. (See Tinker.)

A student's unposed picture is used in the school newspaper in an advertisement.

7. Do you feel that you should prevent publication? 1. No (48%) 2. Yes (45%) NA (7%)

8. Do you have the legal authority to prevent publication of the picture? 1. No (37%) 2. Yes (54%) NA (7%)

Appropriation of a person's name or image in an advertisement without permission constitutes invasion of privacy, according to Pavesich v. New England Life Insurance Co. In Nebraska, Rhode Island, and Wisconsin this right is not recognized.

Barber v. Time, Inc., 348 No. 119, 159 S.W. 2d 291, 293 (1942). Also, Pavesich v. New England Life Insurance Co., 122 Ga. 190, 50 S.E.68 (1905). Mapp v. Ohio, 367 U.S. 643 81 S.Ct. 1684 (1961). Griswold v. Connecticut, 381 U.S. 479, 85 S.Ct. 1678 (1965). Time, Inc. v. Hill, 385 U.S. 374, 87 S.Ct. 534 (1967).

The school's newspaper staff approves the publication of an advertisement for contraceptives.

9. Do you have the legal authority to ban publication of the ad? 1. No (37%) 2. Yes (59%) NA (4%)

10. Do you feel that you should prevent publication of the ad?
1. No (23%) 2. Yes (73%) NA (4%)

Zucker v. Panitz, 68 Civ. 1339, 229 F. Supp. 102 (S.D. N.Y., May 15, 1969). A student paper has the right to publish a paid advertisement even though school authorities feel the paper should be concerned primarily with school-related issues.

The school newspaper uses in one of its articles a "four-letter" word relative to sexual intercourse.

11. Do you feel that you should demand removal of the word?
1. No (2%) 2. Yes (98%)

12. Can you legally prevent use of the word? 1. No (19%) 2. Yes (75%)
NA (5%)

In Papish v. the Board of Curators the Supreme Court ruled that Ms. Papish could not be expelled for printing a word that suggests one who engages in maternal incest. In Bazaar v. Fortune a federal court of appeals ruled that the school could only print a disclaimer. However, according to Roth v. U.S., obscentity is not protected by the First Amendment.

Papish v. the Board of Curators of the University of Missouri, 331 F. Supp. 1321 (D.C. No 1971), U.S. Sup. Ct. Reports, L.W. 3496, 1973, p. 639. (See also Channing Club, Bazaar v. Fortune, and Tinker.)

Students are distributing just outside of the main gate of the school an underground newspaper that contains profanity and vulgarity.

13. Do you feel that you should prevent distribution of the newspaper?
1. No (52%) 2. Yes (48%)

14. Can you legally stop distribution of the paper? 1. No (78%)
2. Yes (18%) NA (4%)

In Shanley v. Northeast Independent School District the appellate court emphatically indicated that a school board could not control children off the school grounds and after hours.

See the Papish citation above concerning distribution. Baker v. Downey City Board of Education, 307 F. Supp. 517 (C.D. Cal. 1969), established the so-called "Downey principle" which would seem to support the principal who thought he could stop distribution. However, during the intervening years a string of cases has eroded that principle. Jacobs v. Indianapolis Board of School Commissioners, 349 F. Supp. 605 (Ind. 1972). See Miller v. California and Riseman v. School Committee of Quincy. Fujishima v. Board of Education, 460 F. 2d at 1359. Baker has been overturned implicitly by the Papish decision.

The school newspaper editorially attacks disproportionate state taxes on white and blue collar workers.

15. Do you feel that you should take some disciplinary action against the editor? 1. No (94%) 2. Yes (6%)

16. Do you have the legal authority to discipline the editor? 1. No (82%) 2. Yes (16%) NA (2%)

The principal cannot, according to Dickey v. Alabama State Board of Education. The court held that a "no criticism" rule was unreasonable and the suspension was improper. Dickey v. Alabama State Board of Education, 273 F. Supp. 613 (M.D. Ala. 1967). See also Tinker and Scoville.

The school newspaper runs a story that says sexually active students are not using contraceptives.

17. Do you feel that you should bar the inclusion of this article in the newspaper? 1. No (50%) 2. Yes (47%) NA (3%)

18. Can you legally bar this story from the paper? 1. No (61%) 2. Yes (34%) NA (5%)

In Gambino v. Fairfax County School Board, 45 L.W. 2414 (E.D. Va. 1977) a lower court ruling was affirmed by an appellate court; a student newspaper was a vehicle for student expression and was entitled to First

Amendment protection.

The Background Data section below is a continuation of the questionnaire sent to principals. It was designed to elicit information about their background, education, and journalistic experience to compare with their responses to case items one through eighteen. Percentage of response to each choice is addes below in parentheses.

BACKGROUND DATA

19. What is your age? 1. under 30-39 (28%) 2. 40-49 (44%) 3. 50 or more (28%)

20. How many years of experience have you had as a high-school principal? 1. 0-3 (27%) 2. 4-10 (43%) 3. 11 or more (30%)

21. Have you studied journalism? 1. No (87%) 2. Yes (13%)

22. If you responded "Yes" to No. 23, have you had a course in mass communications law? 1. No (98%) 2. Yes (2%)

23. Have you studied education law? 1. No (15%) 2. Yes (85%)

24. Have you ever worked as a professional journalist? 1. No (95%) 2. Yes (5%)

25. Were you ever a high-school newspaper advisor/sponsor before becoming principal? 1. No (94%) 2. Yes (6%)

26. Does your school have a school publications editorial board? 1. No (82%) 2. Yes (18%)

27. Does your school or school district have a formal statement of policies covering the operation of student publications. 1. No (74%) 2. Yes (26%)

FINDINGS

Table 1 shows that the 1977 principals averaged 55 percent correct on the legal aspects and 1979 principals 44 percent. A Spearman Rank Correlation revealed that the 1979 group was significantly (.05) less knowledgeable than the 1977 group. The 1977 principals exceeded a score of 60 percent on only five cases, while the 1979 group achieved 60 percent on only three cases. The major differences in legal response were on cases two, eight, and nine.

Table 1

Percentages of Correct Responses By Principals on 1977 and 1979 Surveys

Number	1977	1979	Percentage Difference*
2	67	32	-35
4	12	25	13
6	21	22	1
8	86	54	-32
9	71	23	-48
12	14	19	5
14	76	78	2
16	93	82	-11
18	55	61	6
Mean	55	44	-11

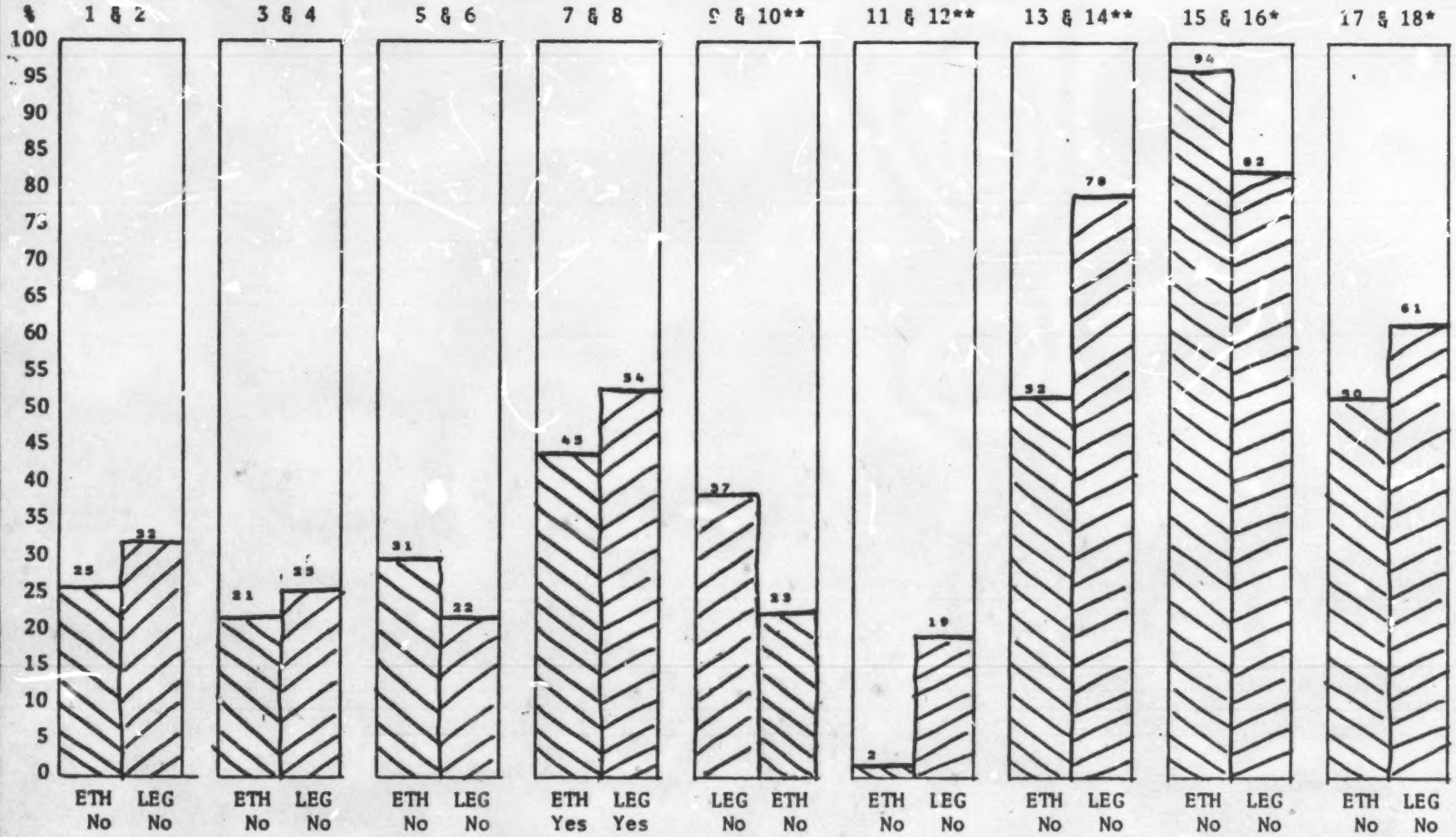
*Sig. at .05 (Spearman Rank Correlation)

Two Chi squares were significant in relation to whether the principals had had a course in communications law. In response to case nine dealing with publication of an ad for contraceptives principals with 4-10 years of administrative experience had a significantly (.05) higher percentage of correct responses than did those in the 0-3 and 11-or-more categories. Concerning case thirteen involving off-campus distribution of an underground newspaper off-campus containing profanity and vulgarity, significantly (.01) more principals with 4-10 years of experience felt that they should prevent distribution.

Figure 1 displays the percentages of the principals' responses to the ethical and legal questions. To evaluate whetehr the differences in percentages on each case represented significant dichotomies, Cochran Q-tests (McNemar 2x2) were computed. Five were found to be significant. Pairs five (9 and 10), six (11 and 12), and seven (13 and 14) were signficant at .01. Pairs eight (15 and 16) and nine (17 and 18) were significant at .05. These dichotomies are indicated on Figure 1.

FIGURE I

ETHICAL/LEGAL DICHOTOMIES OF PRINCIPALS' RESPONSES



Cochran Q (McNemar 2X2)
*Sig. at .05
**Sig. at .01

PRINCIPALS' RESPONSE (LEGAL) = LEG
PRINCIPALS' RESPONSE (ETHICAL) = ETH

Table 2 breaks down the pairs of ethical/legal responses displayed in Figure 1. Forty-four percent of the respondents gave an incorrect legal response with which their ethical response agreed. Thirty percent of the respondents selected the correct legal response and gave an ethical response that agreed. Dichotomies between ethical and legal responses were of small magnitude for the respondents who selected the correct legal response but disagreed with that response on their ethical decision and for those who selected the incorrect legal response but also disagreed ethically. Thus, a greater dichotomy existed between correct and incorrect legal decisions than existed between ethical and legal responses.

Table 2

Comparison of Percentages of Ethical and Legal Responses

Cases	Pairs	Correct Responses (Legal)	No/No Ethical&Correct Legal Responses Agreed	Yes/No Ethical&Correct Legal Responses Disagreed	Yes/Yes Ethical&Incorrect Legal Responses Agreed	No/Yes Ethical& Incorrect Legal Responses Disagreed
1	1.,2.	32	15	18	52	10
2	3.,4.	25	12	12	62	9
3	5.,6.	22	19	2	64	9
4	7.,8	54	32	5	39	15
5	9.,10	23	17(Yes,Yes)	6(No,Yes)	52(No,No)	19(Yes,No)
6	11.,12.	19	2	17	75	0
7	13.,14.	78	51	28	18	0
8	15.,16	82	81	1	5	11
9	17.,18.	61	40	21	25	9
	Mean	44	30	12	44	9

NOTE: Percentages for pairs do not total 100 percent because subjects did not respond to a part of a pair on some items.

DISCUSSION

Table 2 data permits one to observe that a greater dichotomy existed between correct and incorrect legal decisions than existed between ethical and legal responses. Where the principals believed they could exercise restraint, they tended to feel also that they should. Where they tended to believe that they could not restrain, they tended to feel that they should not. The responses where their "could restrain" disagreed with their "would not restrain" responses (and vice versa) were considerably less in magnitude. Thus, the lack of legal knowledge was greater than the dichotomy between legal and ethical decisions. They supported their legal decisions with their value judgments.

The data shows the principals' lack of knowledge of the law. Unfortunately their telephone interview and instrument comments also reveal that administrators remain highly misdirected concerning their legal rights and responsibilities in relation to the high-school press. Apparently, having little or no legal knowledge, the principals make decisions biased by their personal values, their perception of the mores of their community, or inadequate and unclear interpretations of the law by school boards and board attorneys. That misdirection is reflected, though variously phrased in the interviews and written comments, in this quotation from one of the principals:

> We can do what we feel is in line with community standards until we are challenged in court, and we will continue to do so.

No doubt a factor affecting their attitude is the absence of clear-cut guidelines in their school system policy guides. Indicative of this is the fact that 82 percent of the respondents have no school publications editorial board, and 74 percent said that their school district did not have a formal statement of policies covering the operation of student publications.

One should not assume that principals wish to remain uninformed and arbitrary. Their prevailing attitude can best be summarized in a quotation from one:

> We are rarely furnished information in depth on the handling of student press problems. We want to discharge this obligation responsibly. The school board needs to provide inservice education specifically tailored to our needs in this problem. A casual workshop of several hours or oblique references in school law courses do not meet our needs. We need information that is recent, accurate, and unbiased.

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